

FILED IN CHAMBERS  
THOMAS W. THRASH JR.  
U. S. D. C. Atlanta

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

AUG 13 2010

By JAMES N. HATTEN, Clerk  
*[Signature]* Deputy Clerk

ROBERT MCDUFFIE,	:	MANDAMUS
GDC NO. 149672,	:	28 U.S.C. § 1361
Petitioner,	:	
	:	CIVIL ACTION NO.
v.	:	1:10-CV-2118-TWT
	:	
CHIEF JUDGE DORIS DOWNS	:	
and ATTORNEY GENERAL	:	
THURBERT E. BAKER,	:	
Respondents.	:	

**ORDER AND OPINION**

Petitioner Robert McDuffie ("Petitioner") has filed a petition for a writ of mandamus or for an alternative writ pursuant to 28 U.S.C. § 1651. (Doc. 1 at 1.) In his petition, Petitioner requests an order from this Court directing Respondents to resolve his pending motion for a new trial in the Superior Court of Fulton County and to prepare his case for review in the Georgia Court of Appeals. (*Id.* at 10.) Petitioner also lists five grounds for relief he seeks to raise on direct appeal. (*Id.* at 4-9.)

By way of background, on March 9, 2000, Petitioner was convicted pursuant to a jury trial in the Superior Court of Fulton County of child molestation and sexual exploitation of a child. (*Id.* at 2.) Petitioner received

sentences totaling 30 years for his convictions. (*Id.*; [www.dcor.state.ga.us](http://www.dcor.state.ga.us).) On September 6, 2000, after sentencing was completed, Petitioner's appointed counsel filed a motion for a new trial. (*Id.*) According to Petitioner, the motion for a new trial is still pending in the Superior Court of Fulton County. (*Id.* at 3.) Petitioner seeks relief in this Court in order to end the considerable delay in resolving his motion for a new trial. (*Id.* at 10.)

Federal mandamus is available only "to compel an officer or employee of the United States . . . to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Federal courts have no general power to issue writs of mandamus against state officials. *Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275 (5th Cir. 1973); *Noe v. Metropolitan Atlanta Rapid Transit Authority*, 485 F. Supp. 501, 504 (N.D. Ga. 1980), *aff'd*, 644 F.2d 434 (5th Cir.), *cert. denied*, 454 U.S. 1126 (1981). Therefore, this Court cannot grant Petitioner his requested relief via a writ of mandamus.

In the alternative, Petitioner asks this Court to issue a writ under 28 U.S.C. § 1651. (Doc. 1 at 1.) Section 1651(a) permits a federal court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). However, a federal court

may not issue a writ under § 1651, “if adequate remedies at law are available.” *Alabama v. United States Army Corps of Engineers*, 424 F.3d 1117, 1132 (11th Cir. 2005).

An adequate remedy at law is available to Petitioner. Specifically, Petitioner may file a federal petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254; 28 U.S.C. § 2241(c)(3).<sup>1</sup>

Before seeking federal habeas corpus relief, a state prisoner is required to exhaust his available state remedies. *See* 28 U.S.C. § 2254(b)(1); *Thomas v. Crosby*, 371 F.3d 782, 787 (11th Cir. 2004) (state prisoners are subject to the restrictions of § 2254 regardless of whether his federal habeas corpus petition is brought pursuant to § 2241 or § 2254). Thus, if Petitioner has not yet done so, he should first seek relief in state court by filing a state petition for a writ of habeas corpus before pursuing federal habeas corpus relief. *See* O.C.G.A. § 9-14-42(a); *Chatman v. Mancill*, 626 S.E.2d 102, 107-08 (Ga. 2006) (reviewing “substantial delays experienced during the criminal appellate process” under the test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972)).

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<sup>1</sup> A review of the databases for this Court and the other federal district courts located in Georgia indicate that Petitioner has not previously sought federal habeas corpus relief.

Because this Court is unable to provide Petitioner's requested relief under either 28 U.S.C. § 1361 or 28 U.S.C. § 1651, this action should be summarily dismissed. *See* 28 U.S.C. § 1915A. In order to avoid limiting Petitioner's right to seek federal habeas corpus relief, dismissal of this action will be without prejudice.

**IT IS ORDERED** that the instant *pro se* petition for a writ of mandamus [1] is **DISMISSED WITHOUT PREJUDICE**. For the purpose of dismissal only, Petitioner's motion for leave to file this action *in forma pauperis* [2] is **GRANTED**.

**IT IS SO ORDERED**, this 13 day of August, 2010.

  
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THOMAS W. THRASH, JR.  
UNITED STATES DISTRICT JUDGE